

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

**ORIGINAL**

In the Matter of )  
 )  
Provision of Directory Listing Information ) CC Docket No. 99-273  
under the Communications Act of 1934, )  
as amended )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF DIRECTORYNET, LLC**

DirectoryNET, LLC ("DirectoryNET"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>1</sup> hereby submits its Reply Comments in the above-captioned proceeding. DirectoryNET provides electronic directory assistance (that is, directory assistance without operators) and publishes requested listings over various network arrangements including the Internet. By only publishing listings as and when requested, and by offering customers the ability to integrate directory assistance functionality into software, DirectoryNET offers customers cost-effective, time-saving solutions for users of directory assistance. DirectoryNET is, in essence, a custom electronic publisher of directory assistance information.

In its Notice,<sup>2</sup> the Commission asked whether the phrase "in any format" in Section 222(e) of the Communications Act of 1934, as amended (the "Act") indicates Congress' intent not to restrict the kinds of directories that could be published using subscriber list information

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<sup>1</sup> 47 C.F.R. Sections 1.415 and 1.419.

<sup>2</sup> *Provision of Directory Listing Information under the Communications Act of 1934, as amended*, Notice of Proposed Rulemaking in CC Docket 99-273 (rel. Sept. 9, 1999) (the "Notice").

**FLEISCHMAN AND WALSH, L. L. P.**

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1400 SIXTEENTH STREET, N. W.  
WASHINGTON, D.C. 20036

TEL (202) 939-7900 FAX (202) 745-0916

INTERNET fw@fw-law.com

AARON I. FLEISCHMAN

**FLEISCHMAN AND WALSH, P. C.**

CHARLES S. WALSH  
ARTHUR H. HARDING  
STUART F. FELDSTEIN  
JEFFREY L. HARDIN  
STEPHEN A. BOUCHARD  
R. BRUCE BECKNER  
CHRISTOPHER G. WOOD  
SETH A. DAVIDSON  
JAMES F. MORIARTY  
MATTHEW D. EMMER  
HOWARD A. TOPEL  
LOUIS H. DUPART\*

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JILL KLEPPE MCCLELLAND  
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SETH M. WARNER  
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CARA E. SHEPPARD  
STEVEN J. HAMRICK  
KEVIN C. BRENNAN  
FILOMENA D'ELIA  
ARDEN T. PHILLIPS\*\*

\* VA BAR ONLY  
\*\*MD BAR ONLY

October 28, 1999

**via Hand Delivery**

Magalie Roman Salas, Secretary  
Office of the Secretary  
Office of Managing Director  
Federal Communications Commission  
Washington, DC 20554

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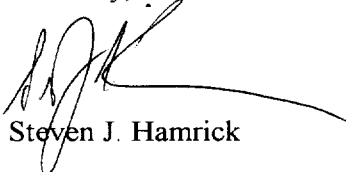
**Re: Reply Comments of DirectoryNET, LLC**

Dear Ms. Salas:

DirectoryNET, LLC ("DirectoryNET"), pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1415 and 1.419, and by its attorneys, hereby submits its Reply Comments in CC Docket No. 99-273. DirectoryNET's Reply Comments are summarized under "Conclusion" on the fifth and final page of Reply Comments' body. Furthermore, DirectoryNET's Reply Comments do not have any section headers, thus negating the possibility of a table of contents.

If you have any questions concerning this submission, or if you require further information, kindly contact DirectoryNET's undersigned counsel.

Cordially,



Steven J. Hamrick

*Counsel to DirectoryNET, LLC*

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("SLI") obtained pursuant to section 222(e).<sup>3</sup> The answer to the Commission's query is that "in any format" Section 222(e) does apply to making SLI available to electronic directory assistance publishers such as DirectoryNET.

To determine Section 222(e)'s meaning, the Commission must "construe a statutory term in accordance with its ordinary or natural meaning."<sup>4</sup> Section 222(e) of the Act reads, in pertinent part, as follows:

[A] telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms and conditions, to any person upon request for the purpose of publishing directories in any format.<sup>5</sup>

The ordinary meaning of "any person" and "any format" directs the Commission not to restrict SLI provision to those publishing paper directories. Further, Congress specifically targeted "directory alternatives" to paper publishing to receive SLI.<sup>6</sup> Denying dial-up and Internet providers such as DirectoryNET access to SLI on nondiscriminatory rates, terms and conditions would defeat the very purpose of Section 222(e), which Congress established to combat the "LECs' total control over subscriber list information."<sup>7</sup>

The Commissioners understand Congressional intent on this issue. In her Separate Statement in this proceeding, Commissioner Susan Ness said, "The statutory language is clear on

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<sup>3</sup> See Notice at para. 173.

<sup>4</sup> *FDIC v. Meyer*, 510 U.S. 471, 476 (1994).

<sup>5</sup> 47 U.S.C. Section 222(e).

<sup>6</sup> See Statement of Rep. Barton, 142 Cong. Rec. H1160 (daily ed. Feb. 1, 1996) ("Statement of Rep. Barton").

<sup>7</sup> House Report No. 104-204, pt.1, at 89 (1995) ("H. Rep. No. 104-204").

this point -- 'in any format' necessarily includes directories published in an electronic format."<sup>8</sup>

Furthermore, Commissioner Harold Furchtgott-Roth stated, "An entity that discloses (SLI) on an Internet site would clearly be engaging in activity that the dictionary would call 'publishing.'"<sup>9</sup>

Moreover, the Commission recognizes its own Internet postings as "publishing," thus supporting the conclusion that "publishing" as used in Section 222(e) of the Act encompasses Internet listings.<sup>10</sup>

The Notice also seeks comment on whether the Commission should preclude State regulations that allow differing rates and terms for SLI for different uses of that information.<sup>11</sup> The Commission must do so, by establishing a national policy through revisitation of its "presumptively reasonable" rates of \$0.04 per listing for subscriber list information ("SLI") and \$0.06 for those listings' updates,<sup>12</sup> which are inaccurate and violate the Telecommunications Act of 1996 (the "1996 Act"). During hearings on the 1996 Act, Congressman Paxon specifically sought to ensure that "in determining what constitutes a reasonable rate ... the most significant factor should be the incremental cost of delivering that listing to the requesting party."<sup>13</sup> Yet, the Commission's "presumptively reasonable" rates bear no resemblance to the local exchange

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<sup>8</sup> Separate Statement of Commissioner Susan Ness, CC Docket Nos. 96-115, 96-98 and 99-273, *Third Report and Order, Second Order on Reconsideration and Notice of Proposed Rulemaking*, rel. Sept. 9, 1999 at 1 (citing *Reno v. ACLU*, 521 U.S. 844, 853 (1997) ("any person or organization with a computer connected to the Internet can 'publish information'")).

<sup>9</sup> Separate Statement of Commissioner Harold Furchtgott-Roth Dissenting In Part, CC Docket Nos. 96-115, 96-98 and 99-273 at 4.

<sup>10</sup> See *Implementation of Section 9 of the Communications Act, Report and Order*, 9 FCC Rcd 5333, 5337 n.6 (1994) (Commission stating that a Notice of Proposed Rulemaking "was published on the Internet" when defending the accessibility of its notice to small entities).

<sup>11</sup> See Notice at para. 176.

<sup>12</sup> See *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order, FCC 99-227, at para. 72 (rel. Sept. 9, 1999).

<sup>13</sup> 142 Cong. Rec. E184.

carriers' ("LECs") incremental cost of delivering listings to requesting parties. The "presumptively reasonable" rates are likely to be on the order of 50 times greater than any justifiable incremental cost, and DirectoryNET has encountered pricing that is more than double the presumptively reasonable rates, or more than 100 times greater than incremental cost.

The Commission has before it evidence that the incremental costs of providing SLI is a small fraction of its "presumptively reasonable" rate. For instance, the Commission cited BellSouth Telecommunications, Inc.'s incremental cost of providing base file SLI as \$0.003 per listing.<sup>14</sup> Regardless of decision of state commissions, the Commission must revisit its "presumptively reasonable" rates to produce a rate that is orders of magnitude closer to that intended by Congress.

Establishing lower rates would be consistent with the general purposes of the 1996 Act "to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid development of new telecommunications technologies."<sup>15</sup> Furthermore, as recognized by Congress in its creation of Section 222(e) of the Act, lower rates are essential to survival of alternative listing providers and to consumer benefit. As stated by Representative Barton, "Subscriber list information is essential to publishing directories. Carriers that charge excessive prices or set unfair conditions on listing sales deprive consumers and advertisers of cheaper, more innovative, more helpful directory alternatives."<sup>16</sup>

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<sup>14</sup> See Third Report and Order at para. 93.

<sup>15</sup> House Report No. 104-204, pt. 1, at 47 (1995) ("H.R. Rep. No. 104-204").

<sup>16</sup> Statement of Rep. Barton.

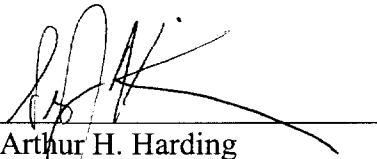
## CONCLUSION

DirectoryNET respectfully requests the Commission to extend Section 222(e)'s application to electronic publishers, and revise its "presumptively reasonable" costs for such data to equal incremental costs, consistent with Congressional intent.

Respectfully submitted,

DirectoryNET, LLC

By:



Arthur H. Harding  
Steven J. Hamrick  
Cara E. Sheppard  
Fleischman and Walsh, L.L.P.  
1400 Sixteenth Street, N.W.  
Sixth Floor  
Washington, D.C. 20036

Its Attorneys

October 28, 1999

**Certificate of Service**

I, Tonya Y. VanField, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Reply Comments" was served this 28th day of October, 1999, via first class mail, postage prepaid, upon the following:

J. Carl Wilson, Esq.  
Lisa B. Smith, Esq.  
Mary Brown, Esq.  
MCI Worldcom, Inc.  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

John M. Goodman, Esq.  
Michael E. Glover, Esq.  
Bell Atlantic  
1300 I Street, N.W.  
Washington, D.C. 20005

Philip L. Verveer, Esq.  
Theodore Whitehouse, Esq.  
Sophie J. Keefer, Esq.  
Willkie Farr & Gallagher  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20036-3384

Gregory J. Vogt, Esq.  
Kenneth J. Krisko, Esq.  
Nicole M. McGinnis, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Andre J. Lachance, Esq.  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

John F. Raposa, Esq.  
GTE Service Corporation  
600 Hidden Ridge, HQEO3J27  
Irving, TX 75038

Douglas E. Hart, Esq.  
Frost & Jacobs L.L.P.  
2500 PNC Center  
Cincinnati, OH 45202

Steven P. Goldman, General Counsel  
Teltrust, Inc.  
6322 South 3000 East  
Salt Lake City, UT 84121

Leonard J. Kennedy, Esq.  
Loretta J. Garcia, Esq.  
Cécile G. Neuvens, Esq.  
Dow, Lohnes & Albertson, P.L.L.C.  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

Kelly Cameron, Esq.  
Powell, Goldstein, Frazer &  
Murphy, L.L.P.  
1001 Pennsylvania Avenue, N.W.  
6<sup>th</sup> Floor  
Washington, D.C. 20004

Kathryn Marie Krause, Esq.  
Dan L. Poole, Esq.  
U S West Communications, Inc.  
1020 19<sup>th</sup> Street, N.W.  
Suite 700  
Washington, D.C. 20036

Gerald J. Waldron, Esq.  
Mary Newcomer Williams, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044

Michelle W. Cohen, Esq.  
Paul, Hastings, Janofsky & Walker L.L.P.  
1299 Pennsylvania Avenue, N.W.  
Tenth Floor  
Washington, D.C. 20004

Lawrence E. Sarjeant, Esq.  
Linda L. Kent, Esq.  
Keith Townsend, Esq.  
John Hunter, Esq.  
Julie E. Rones, Esq.  
United States Telephone Association  
1401 H Street, N.W.  
Suite 600  
Washington, D.C. 20005

International Transcription Service, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
\*\* via hand delivery

Ms. Judy Boley  
Federal Communications Commission  
1-C804  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Albert Halprin, Esq.  
Joel Bernstein, Esq.  
Halprin, Temple, Goodman and Maher  
555 12<sup>th</sup> Street, N.W.  
Suite 950 N  
Washington, D.C. 20004

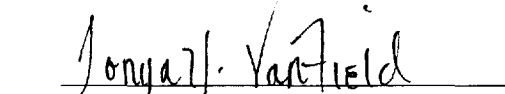
Gary M. Cohen, Esq.  
Lisa N. Anderson, Esq.  
Blumenfeld & Cohen  
1625 Massachusetts Ave., N.W.  
Suite 300  
Washington, D.C. 20036

Lonn Beedy  
Metro One Telecommunications, Inc.  
11200 Murray Scholls Place  
Beaverton, OR 97007

Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
Room TW- B204  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554  
\*\* via hand delivery

Mr. Al McCloud  
Network Services Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
\*\* Diskette copy via hand delivery

\*\* via hand delivery

  
Tonya Y. VanField